

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

TYKEITH L. TURNER

Defendant-Appellant

Supreme Court No. 158068

Court of Appeals No. 336406

Lower Court No. 95-10246-01

WAYNE COUNTY PROSECUTOR

Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE

Attorney for Defendant-Appellant

SUPPLEMENTAL AUTHORITY
PURSUANT TO MCR 7.212(F) AND MCR 7.312(I)

STATE APPELLATE DEFENDER OFFICE

BY: ERIN VAN CAMPEN (P76587)

Assistant Defender

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Following a resentencing and sentence reduction for a murder conviction pursuant to *Miller v Alabama*, 567 US 460, 465; 132 S Ct 2455 (2012), the trial court properly resentenced Mr. Turner on his lesser concurrent conviction for assault. The Court of Appeals reversed, and Mr. Turner filed an Application for Leave to Appeal with this Honorable Court, which is currently pending. See Application for Leave to Appeal, 7/12/2018.

On November 21, 2018, this Court remanded a case for resentencing on a concurrent lesser conviction after the sentence for the more serious conviction was reduced. See *People v Lakeisha Gunn*, __ Mich __; __ NW2d __ (2018) (Docket No. 156962) (Slip Order attached). In *Gunn*, this Court reversed the Court of Appeals judgment and held, “The trial court erred by finding that it did not have the authority to review the defendant’s sentence for second-degree arson.” *Id.* This is because the original concurrent sentence was imposed without regard to the properly scored guidelines and was based upon inaccurate information. *Id.*, citing *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006).

Similarly, Mr. Turner’s original concurrent sentence for assault was imposed without regard to the properly scored guidelines and was based upon inaccurate information, as discussed at length in Mr. Turner’s Application for Leave to Appeal.

Consistent with *Gunn*, *Francisco*, and Mr. Turner’s due process right to be sentenced on the basis of accurate information, this Court should reverse the Court of Appeals’ judgment and affirm the trial court’s ruling that it had authority to resentence Mr. Turner on his lesser concurrent conviction for assault.

Respectfully submitted,

Date: November 30, 2018

STATE APPELLATE DEFENDER OFFICE

BY: /s/ Erin Van Campen

ERIN VAN CAMPEN (P76587)

Order

Michigan Supreme Court
Lansing, Michigan

November 21, 2018

156962

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

LAKEISHA NICOLE GUNN,
Defendant-Appellant.

SC: 156962
COA: 333317
Wayne CC: 13-004566-FH

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

On order of the Court, the application for leave to appeal the November 21, 2017 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, we VACATE the second-degree arson sentence of the Wayne Circuit Court, and we REMAND this case to the trial court for resentencing on that count. The trial court erred by finding that it did not have the authority to review the defendant's sentence for second-degree arson. When the defendant was originally sentenced, the probation department calculated her guidelines only for the higher crime class offense of placing explosives on or near property, MCL 750.207(2)(b), and not for second-degree arson, MCL 750.73(1). The trial court sentenced the defendant to 15 years for both crimes, which was a departure sentence for the arson offense, but it had no practical effect in light of the sentence for placing explosives on or near property. The trial court acknowledged this by stating that the arson sentence was "really based on" the higher class sentence. After the defendant was resentenced in 2016 and her sentence for placing explosives on or near property was reduced, the departure sentence for arson was no longer inconsequential. The arson sentence, being based on a higher class crime offense sentence that had been significantly reduced, was invalid because it was based on inaccurate information, and the trial court had the authority to resentence the defendant on that count. *People v Francisco*, 474 Mich 82, 88 (2006); MCR 6.429(A).

WILDER, J., did not participate because he was on the Court of Appeals panel at an earlier stage of the proceedings.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 21, 2018

Clerk

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